IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3886 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DWARKAPRASAD @ DURGAPRASAD MAHARAJ PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR JOY MATHEW for Petitioner

MS NANDINI JOSHI AGP for Respondent Nos. 1 and 2

MS SANGEETA VISHEN for M/S TRIVEDI & GUPTA for Resp. No.3

MR PK PANCHOLI for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner challenges the order dated November 12, 1992, Annexure C to the petition, made by the Assistant Labour Commissioner, Ahmedabad by which

he refused to refer the dispute to the appropriate authority for adjudication raised by the petitioner through his Union on July 27, 1992, which was numbered as IDR Case No.2993 of 1992, to the Labour Court.

2. According to the petitioner he joined the respondent No.3 Theatre as a security guard (Watchman) on June 26, 1989 at a monthly salary of Rs.400/- His attendance was being marked by the Manager and/or any of the owners of the theatre since January 1990. Initially he was employed by a labour contractor named Bandly Security and the salary was paid by the said contractor. In the month of January 1990, respondent No.3 absorbed him and started treating him as its employee without issuing appointment letter. Though the petitioner was paid monthly salary of Rs.400/- and overtime wages, he was getting salary which was much less than what was prescribed by the Minimum Wages Act and, therefore, he used to make oral complaint to respondent No.3 to pay him at least the minimum wages prescribed by law including bonus and other benefits for which he was legally entitled to. Since the petitioner did not receive any favourable answer from respondent No.3, he informed the respondent No.3 about his willingness to approach the Court of law for redressal of his grievance. According to the petitioner, on January 1, 1992 he was called to the office of the theatre and asked him to sign on some blank papers. Thereafter on March 1, 1992 he was informed that his service was no more required and he may find out job somewhere else. It is the case of the petitioner that with the help of the Union, a complaint was made on March 6, 1992 to respondent No.2 which was numbered as IDR Case No.985 of 1992 but it came to be withdrawn on April 27, 1992 as according to him, respondent No.3 had agreed to reinstate him with backwages and once again he started working under the respondent No.3. It is the case of the petitioner that once again on July 25, 1992 by an oral order respondent No.3 terminated his services without assigning any reason. The petitioner, therefore, filed a complaint before the Payment of Wages Authority being Payment of Wages Case No. 717 of 1992. It is the case of the petitioner that on July 27, 1992 the petitioner's Union filed a complaint to the respondent No.2 which was numbered as IDR Case No.2993 of 1992 in which a request was made to make reference to the Labour Court about the dispute raised by the petitioner. The respondent No.2 called both the the parties in his office and started conciliation proceedings and finally on November 12, 1992 rejected the complaint and thereby refused to make reference to the Labour Court about the dispute raised by

the petitioner in his complaint. The petitioner, therefore, filed this petition and prayed to issue a writ of certiorari, mandamus or any other appropriate writ, direction or order declaring the action of the Assistant Labour Commissioner in refusing to refer the dispute to the Labour Court by order dated November 11, 1992 at Annexure C as arbitrary, illegal, null and void and contrary to the provisions of law and to quash the said action.

3. Mr. Joy Mathew, the learned advocate appearing for the petitioner contended that respondent No.2 refused to refer the dispute to the Labour Court by merely relying upon the records i.e., two pay bills produced by respondent No.3 which have no basis. It is further contended that at the time of conciliation the petitioner had informed the respondent No.2 that his signatures were obtained by respondent No.3 under coercion, threat and undue influence. It is emphatically contended by the learned counsel that though the petitioner had produced the xerox copy of the attendance card bearing signature of respondent No.3 or its agent before respondent No.2, it reached to the wrong conclusion holding that the petitioner had made alteration and additions on the cards. He, therefore, emphatically contended that the impugned order passed by the Assistant Labour Commissioner whereby complaint made by the petitioner was rejected and thereby refused to refer the dispute raised by the petitioner to the Labour Court is contrary to law and settled canons of labour legislation. He, therefore, urged to allow this petition and set aside the order passed by the Assistant Labour Commissioner and to refer the dispute raised by the petitioner to the Labour Court.

4. Ms. Nandini Joshi, learned AGP appearing for respondents Nos.1 and 2 has supported the order of the respondent No.2. She further contended that the the Assistant Labour Commissioner, after applying mind and by passing detailed order, rejected the complaint and refused to refer the dispute raised by the petitioner to the Labour Court and, therefore, interference in the impugned order is not called for and urged that the petition may be rejected.

5. Ms. Sangeeta Vishen, learned counsel appearing for respondent No.3, has contended that the petitioner was never in service of respondent No.3. According to her, the petitioner was merely serving with the respondent No.4, Jyoti Security Services which was given contract to supply security guards to respondent No.3. She has placed reliance on the affidavit in reply filed

by the respondent No.3 wherein, in paragraph 4, it reiterated the same facts and urged to dismiss the petition.

6. Mr. P.K. Pancholi, learned counsel for respondent No.4 is not present. However, affidavit in reply filed by the respondent No.4 is considered for the purpose of deciding this matter.

7. I have considered the submissions made by the learned advocates for the parties and the documents forming part of the petition and the impugned order recorded by the Assistant Labour Commissioner.

8. There is no manner of doubt that the petitioner was serving as a security guard in the theater respondent No.3 on a monthly salary of Rs.400/- On having perusal of the attendance card which is produced at Annexure A to the petition, it transpires that it relates to the presence marked by Apsara-Aradhana Theatre. But in it no where it is stated that the petitioner was ever employed by respondent No.3. The petitioner was removed as a security guard and, therefore, he filed a complaint through his Union on 6.3.1992 which was numbered as IDR Case No.985 of 1992. It is also evident that the said complaint was withdrawn by him during the course of hearing on April 27, 1992. It is also recorded by the Assistant Labour Commissioner that it revealed that the petitioner was a workman of respondent No.4/Jyoti Security Services which was a contractor firm. It is the categorical finding recorded by the Assistant Labour Commissioner that the petitioner has never been in the employment of respondent No.3 theatre at any point of time. In fact the respondent No.3, for the purpose of having security services, was giving contracts to various independent parties/contractors operating in the field. One of such contract, in the year 1981, was given to one N.M. Gupta of Jay Security Force who was in fact responsible for recruitment of the petitioner for working as a watchman at various places/establishments with which the contractor had entered into contracts for providing security services. The contract between the respondent No.3 and contractor continued till December 31, 1992. When security contract was given to respondent No.4, the petitioner made an application to respondent No.4 showing his interest in working with the respondent No.4 and requesting that since he was in need of employment he should be given employment in view of the fact that the contract between the respondent No.3 and the contractor having come to an end. A copy of the said application was also endorsed by respondent No.4 to respondent No.3

and a copy of the said application is annexed as Annexure I to the affidavit in reply. Thus it is proved that the petitioner has never been in the employment of respondent No.3 theater and there existed no relationship of employer and employee between respondent No.3 and the petitioner. The contention that the petitioner was in service of respondent No.3 theater and, therefore, without due process of law respondent No.3 should not have removed him from service has no substance as there was no privity of contract between the petitioner and respondent No.3 and there was no relation with the petitioner and respondent No.3 as servant and master. On the contrary, there is clear evidence that the petitioner was working with respondent No.4 contractor and hence there was no question of termination of his service by respondent No.3.

9. It is revealed from the affidavit in reply filed by respondent No.4 that the petitioner was in the employment of Jyoti Security Services as Watchman and prior to that he was in the employment of N.M. Gupta of Jay Security. Respondent No.4 asserted that even as on the date of filing of the reply the petitioner continued to be in the employment with respondent No.4. It was further pointed out that as an employee of respondent No.4 the petitioner was supposed to work at any place/establishment with which respondent No.4 had entered into contract for providing security services. It was further made clear in the affidavit in reply that the presence of the petitioner was being marked on the attendance cards supplied by respondent No.4 to respondent No.3 theatre and at the request of respondent No.4 the same was being marked by the Manager of respondent No.3 who was normally present throughout the working time of the theatre so that there may not be any confusion regarding exact number of working hours of the petitioner and on that basis payment was made to the petitioner. Respondent No.4 however, contended that discipline, supervision and control of petitioner was with it and respondent No.3 was in no way liable qua the petitioner. It was denied that the services of the petitioner were terminated by respondent No.4 as alleged in the petition and affirmed that the employment ties between the petitioner and respondent No.3 do exist and the same have never been put an end to and with a view to mislead this Court the petitioner has come out with various false and frivolous allegations.

10. On overall appreciation of evidence, this court is satisfied that there is no infirmity in the reasons assigned by the Assistant Labour Commissioner as he has

not taken into account any irrelevant or foreign material. Suffice it to say that the Assistant Labour Commissioner has given cogent and convincing reasons for rejecting the complaint filed by the petitioner through his Union and refusing to refer the dispute to the Labour Court.

11. The Supreme Court in the case of Secretary, Indian Tea Association v. Ajit Kumar Barat and others, AIR 2000 SCC 915 has observed that the appropriate Government would not be justified in making a reference under Section 10 of the Industrial Disputes Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may, in a given case, consider the case for a writ of mandamus. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

12. It is settled proposition of law that jurisdiction of the High Court under Article 226 of the Constitution is very limited and confined itself only to correcting any error of jurisdiction committed by the Tribunal. It cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Tribunal. In this connection, it would be appropriate to refer to the decision in the case of Khanna Improvement Trust v. Land Acquisition Tribunal, (1995) 2 SCC 557, wherein the Supreme Court has held that the High Court must confine itself to correcting any error of jurisdiction committed by the Tribunal and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the Tribunal.

13. In the judgment rendered in the case of H.B. Gandhi v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, the Supreme Court has held that it is a review of the decision making process and not of the decision itself and hence the High Court cannot reappreciate the primary or perceptive facts found by the fact finding authority under statute.

14. Seen in the above context the impugned order made by the Assistant Labour Commissioner cannot be termed as arbitrary, unjust or unreasonable or based on "no evidence" and, therefore, I do not find any valid reason to interfere with the impugned order.

15. For the foregoing reasons the petition fails and accordingly it is dismissed. Rule is discharged with no order as to costs.

16.2.2001. (A.M. Kapadia, J.)

(karan)